

SERVICE LEVEL AGREEMENT

Entered into by and between



A Local Municipality established in terms of the Local Government: Municipal Structures, 1998 (Act no 117 of 1998) (as amended)
Herein represented by Thabo Gelliot Magabane in his capacity as Municipal Manager
(Hereinafter with its successors-in-law referred to as "Client")

And



MAMPUDI
HOLDINGS

ACCOUNTING TAX ADVISORY

A Company duly registered in terms of the laws of the Republic of South Africa, with
registration number 2016/231185/07
Herein represented by Mmathapelo Bridgette Mabula in her capacity as Director and
duly authorised thereto
(Hereinafter with its successors-in-law referred to as "SERVICE PROVIDER")

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WHEREAS the Maruleng Local Municipality requires electronic Performance Management System and Professional Services at Maruleng Local Municipality.

AND WHEREAS the SERVICE PROVIDER indicated that it is suitably qualified to provide an electronic Performance Management System and Professional Services as indicated in the Service Providers proposal response for Tender Reference Number: MLM/SCM/03/2021 which is accepted by MARULENG LOCAL MUNICIPALITY;

AND WHEREAS the parties are desirous to contract with one another and binds itself to meet the performance goals and to comply with the obligations contained in this agreement:

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

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1.0 Preamble

- 1.1 The Municipal Systems Act, 32 of 2000 requires all municipalities to promote a culture of performance through the establishment of a Performance Management System, which must set key performance indicators and targets, as well as monitor, review and report on municipal performance, based on indicators linked to the Integrated Development Plan (IDP), including the national indicators prescribed by the Minister responsible for Local Government.
- 1.2 Maruleng Local Municipality has responded to compliance of the Municipal Systems Act, 32 of 2000 by procurement of an Electronic Performance Management System (herein after referred to as ePMS System) and Professional Services from the Service Provider in the appointment letter dated 29 October 2021.
- 1.3 Maruleng Local Municipality wishes to establish and maintain a high performance culture by:
 - 1.3.1 Ensuring that qualitative IDPs and SDBIPs are developed
 - 1.3.2 Accountability is established through robust performance contracts across all levels
 - 1.3.3 Performance Management is cascaded to lower levels
 - 1.3.4 Improved reporting and monitoring is maintained
 - 1.3.5 Objective and transparent performance evaluations are completed
 - 1.3.6 All staff is capacitated in performance management
 - 1.3.7 Maintaining sustainability of the interventions by embedding the concept of Change Ambassadors (Pathfinders)
 - 1.3.8 Building a robust Institutional framework comprising systems and processes
 - 1.3.9 Embedding a high employee morale environment
- 1.4 The Service Provider is a Management Consultancy Company who is an authorized reseller of the ePMS System. The ePMS system represents a component of the Service Provider's suite of Performance Enhancement Solutions of their Performance Ecosystem as outlined below:
 - 1.4.1 The Service Provider's Performance Ecosystem comprises an Integrated and Holistic "Performance Ecosystem" to improve Organisational and Employee Performance and to create a High Performance Culture. The Solution comprises:
 - i) A Suite of Electronic Performance Management Solutions which is integrated with the ePMS System
 - ii) Business Consulting: To design the Organisations Performance Management Framework, to develop Annual Performance Plans and Performance Contracts and to support, Monitoring and Evaluation processes to enhance and embed the Performance process.
 - iii) Skills Development Training Programmes to improve soft skills to develop annual performance plans, hold performance conversations, manage good and poor performance and skills to utilise our suite of electronic systems complimenting the ePMS system.
 - v) Results Based Leadership Training to improve leadership
 - vi) Change Management Programmes to embed Performance Management and to create high Performance Culture.

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2.0 Nature of this Agreement

- 2.1 This Service Level Agreement between the CLIENT and Service Provider provides for:
- 2.3.1 Provision of services as per Tender Number : MLM/SCM/03/2021 - Appointment of Service Provider for the provision of Electronic Performance Management System and Professional Services.
- 2.3.2 Provision of support to enable effective and efficient functional application of electronic solutions procured in line with clause 2.3.1.

3.0 Interpretation

In this agreement, unless the content indicates otherwise:

- 3.1 Words importing natural persons shall include a reference to body corporate and other legal persons and vice versa;
- 3.2 Words importing the masculine shall include a reference to the feminine and vice versa;
- 3.3 Words importing the singular shall include a reference to the plural and vice versa;
- 3.4 Addendums to this agreement duly signed by both parties (if any) shall be deemed to have been incorporated herein and shall form an integral part hereof;
- 3.5 A reference to a party in a document includes that party's successor in title and permitted assigns;
- 3.6 Any reference to an enactment is to that enactment as at the date of signature hereof and as amended or re-enacted from time to time;
- 3.7 Where the day on or by which anything is to be done is not a business day, it shall be done on or by the first business day thereafter;
- 3.8 In this agreement, any stated period of time shall be reckoned exclusively of the first and inclusively of the last day, unless the last day falls on a Saturday, Sunday or Public Holiday, in which case, the last day shall be the next succeeding day which is not a Saturday, Sunday or Public Holiday;
- 3.9 The headings appearing in this agreement are for the reference purposes only and shall not affect the interpretation hereof;
- 3.10 If any provision is a definition (under this heading "Interpretation" and/or any other heading in this agreement) and is a substantive provision conferring rights or imposing obligations on any party, notwithstanding that it is only in the definition (or such other clause) effect shall be given to it as it were a substantive provision in the body of the agreement;
- 3.11 Where figures are referred to in numerals and words, if there is any conflict between the two, the words shall prevail;
- 3.12 Use of the word "including" followed by one or more examples shall not be interpreted as precluding other, nor as limiting the generality of the preceding words.
- 3.13 Use of the words "pay or payment" or similar, means payment in full without any deduction or set off whatsoever save where expressly provided for herein, on or before the stipulated date;

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- 3.14 It is agreed that both parties have had access to legal advice in the entering into of this agreement and that in the circumstances, and if any interpretation is required, the terms hereof will not be interpreted against the Client. The rule of construction shall therefore not apply;
- 3.15 If there is any conflict between any of the provisions of the agreement then the documents shall apply in terms of the parties' obligations which shall be the conditions contained in Government Procurement: General Conditions of Contract, this agreement and additional documents which shall be specified from time to time by the parties during and when they engage in the project.
- 3.16 No provision of this Agreement shall (unless otherwise stipulated) constitute a stipulation for the benefit of any person (stipulation alteri) who is not a Party to this Agreement;
- 3.17 The official language for communication on engagement between the parties will be English.

4.0 Definitions

- In this contract, unless the context indicates otherwise the following expressions shall have the meaning assigned to them hereunder:-
- "Accounts Executive" refers to the personnel from both Mampudi Holdings and the Client who shall be accountable for administering the implementation of the scope of this Agreement.
- "AFSA" means the Arbitration Foundation of Southern Africa.
- "Agreement" means this License and Maintenance Agreement, including its annexures as amended from time to time.
- "Annual Escalation" shall mean the percentage annual increase on the fee structure between the current and the new calendar period as outlined in Annexure C.
- "Annual License" means the use of authority granted by Mampudi Holdings to the Client to use the Application in line with established controls and assurance functional requirements of the system.
- "Application" shall mean the relevant software system for which the License/ Support/ and Maintenance is granted, namely the Performance Ecosystem. The specific Application details are set out below in Section 3 of Annexure 1.
- "Authorised Representatives" shall mean the personnel from both Mampudi Holdings and the Client who shall administer the implementation of the obligations of either Party as set out in this Agreement.
- "Business Consulting" refers to the Consulting services provided by the Service Provider to enable embedding of the ePMS system or any other subsequent application which integrates into the ePMS System
- "Business day" means any working day, excluding Saturdays, Sundays and Public Holidays;
- "Client" means the Maruleng Local Municipality.
- "Deliverable" means any measurable, tangible, verifiable outcome, result or items that must be produced or completed;

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"Delivery" means delivery in compliance with the conditions of the contract;

"Duration of the Agreement" means 3 years from 01 November 2021 until 30 October 2024.

"Effective date" shall be 01 Nov 2021 regardless of date of signature.

"ePMS System" refers to the electronic Performance Management System and any other subsequent application which integrates into the ePMS System. Refer to Annexure A, Section 3 for the list of Systems which are covered under the ePMS System.

"Fee Structure" shall mean the amount the Client will be required to pay to Mampudi Holdings to provide the Scope of Work.

"Good Industry Practice" in relation to the manner in which services are rendered and as referred to in this agreement, shall mean standards, practices, methods and procedures conforming to all applicable laws and exercising that degree of skills, care, diligence, prudence and foresight that would reasonably and ordinarily be expected from a skilled and experienced person engaged in a similar type of undertaking under certain circumstances;

"Hosting of Application" shall mean the hardware operating platform for the ePMS application and all other subsequent applications procured during the term of this agreement. The Client shall pay the Service Provider Hosting Fees for the ePMS System and all other subsequent applications.

"License" means the license to access VA Performance Ecosystem granted to the Client by Mampudi Holdings in terms of this Agreement.

"Maintenance" means the obligation of Mampudi Holdings to ensure functionality of the Application and to ensure administration and backup of the Client's data and records if Mampudi Holdings is hosting the Application.

"Methodology" means the professional expertise and the system of methods required by the SERVICE PROVIDER to perform the obligations set out in terms of this Agreement;

"Parties" mean the parties to this Agreement being the Client and Mampudi Holdings.

"Payment Terms" shall relate, inter alia, to the period within which the Client is required to effect payments to Mampudi Holdings and other terms of payment as recorded in this Agreement.

"Period of Agreement" shall mean the period for which the Client shall have the right to use the Application and obtain service and Support from Mampudi Holdings.

"Prime rate" means the variable interest rate as charged and calculated by the SERVICE PROVIDER's bankers from time to time;

"Scope of Work" means the work that will be performed by Mampudi Holdings in terms of this Agreement.

"Scope Change" shall mean a variation to the scope of work out lined under Clause 10

"SuperUsers" shall mean the persons appointed by the Client to administer the Application at the Client's site(s) and to interface with Mampudi Holdings regarding issues that prevent the Application from fulfilling its functional requirements. The SuperUser shall be granted full security rights with regards to the Application.

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"Service Provider" shall mean MAMPUDI HOLDINGS (PTY) LTD a Company duly registered in terms of the laws of South Africa bearing Registration No 2016/231185/07, and having its principal address of business at 22 Hornbill Road, Meadowhurst, Randburg, 2194 and shall include its successor in title and permitted assigns;

"Services" shall mean the provisions of services in relation to developing and implementing Performance Ecosystem and professional services;

"Support" shall mean the provision of technical advice and trouble shooting of problems to resolve issues raised by the Client's SuperUser.

"User" shall mean the persons authorised by the Client to have access to utilise functionality of the Application in line with established access, security and password controls.

"VA Performance Ecosystem" means the Suite of Solutions owned and developed by Vision Activ and comprises Electronic systems, Business Consulting, Skills Development and Change Management.

"MARULENG" shall mean Maruleng Local Municipality and its successor in title;

"Written" or "in writing" means hand-written in ink or any form of electronic or mechanical writing.

5.0 Appointment

- 5.1 The Client hereby appoints the SERVICE PROVIDER, who hereby accepts such appointment to execute the Scope of Work as outlined in Clause 10 with effect from the effective date, subject to the terms and conditions of the agreement.
- 5.2 This appointment is subject at all times to:
- 5.2.1 The terms and conditions of this agreement;
- 5.2.2 All applicable by-laws, National and Provincial legislation.
- 5.3 This appointment given in terms of this agreement shall last for the duration of this agreement and upon expiry of this agreement through the effluxion of time or otherwise, all rights and entitlements given in terms of this agreement shall immediately and automatically cease and be of no force or effect save where this agreement expressly provides that any of its provisions will continue.

6.0 Obligations of the Service Provider

- 6.1 **Duty of Care**
The Service Provider shall exercise reasonable skill, care and diligence in the performance of the Services.
- 6.2 **Exercise of Authority**
The Service Provider shall at all material times act in accordance with the contract and provide its services as an independent professional acting with reasonable skills, care and diligence even in a case where client has a contract with a third party for the

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12.8 Upgrading

12.8.1 Service Provider shall be guided by external technological advancements in determining whether changes are necessary to the Application.

12.8.2 Service Provider shall have the right at any time, at its sole and absolute discretion, to modify or delete features and to change the operating interface in the Application, or to change the hardware and computer system specifications necessary to operate the Application. Service Provider shall endeavour to inform the CLIENT of any contemplated changes in advance of making such amendments.

12.8.3 Save for otherwise provided for in paragraph 1 above, Service Provider shall not be obliged to develop and provide changes to the Application.

12.8.4 Customized upgrade requirements shall be treated as a Scope Change and must be duly authorised.

12.9 Warranties

12.9.1 SERVICE PROVIDER warrants that:

12.9.1.1 It has taken all necessary actions to authorise its execution of this agreement and that it is able to perform the services as required in terms of this agreement;

12.9.1.2 The execution and performance of this agreement and the services do not and will not contravene any provision of the memorandum or articles of association of SERVICE PROVIDER as at the date of signature hereof, or any order of court or agreement with any third party in existence as at the date of signature hereof;

12.9.1.3 All consents (in the form of internal authorities and applicable business licenses) required for the performance of the service are in full force and effect as at the date of signature hereof and will be kept current for the duration of this agreement and any conditions contained in such consents will be complied with at all times;

12.9.1.4 No litigation, arbitration, investigation and administrative proceedings is in progress as at the date of signature hereof, or the best of the knowledge of the SERVICE PROVIDER as at the date of signature hereof having made all reasonable enquiries

12.9.1.5 SERVICE PROVIDER is not subject to any obligation, non-compliance with which is likely to have a material adverse effect on its ability to provide the services

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12.9.1.6 No proceedings or any other steps have been taken or, to the best of the knowledge of the SERVICE PROVIDER having made all reasonable enquiries, threatened for the winding-up or liquidation (whether voluntary, provisional or final), judicial management (whether provisional or final) or deregistration of SERVICE PROVIDER or for the appointment of a liquidator, judicial manager or similar officer over it or over any of its assets;

12.9.1.7 All information disclosed by or behalf of the SERVICE PROVIDER to MARULENG at any time up to the date of signature hereof and, in particular during the bid process preceding the award of this agreement to SERVICE PROVIDER, is true, complete and accurate in all material respects and SERVICE PROVIDER is not aware of any material facts or circumstances not disclosed to MARULENG which would, if disclosed, be likely to have an adverse effect on MARULENG's decision (acting reasonable) to award this agreement to SERVICE PROVIDER.

12.9.1.8 Service Provider warrants that the Application is fully functional and free of any known technical bugs. Service Provider further warrants that should the CLIENT become aware of any technical bugs during the Period of Agreement, such technical bugs shall be fixed free of charge if, as a result of the technical bugs, the system fails to conform to technical specifications or the system malfunctions due to any reason whatsoever.

12.9.1.9 Save for the warranties set out above, Service Provider disclaims all other guarantees and warranties whatsoever regarding the Application, whether express or implied or statutory.

12.9.2 MARULENG warrants that:

12.9.2.1 It has taken all necessary actions to authorise the execution of this agreement; and

12.9.2.2 It has not knowingly omitted to disclose any material information in its possession or under its control relating to the services to be performed in terms of this contract.

12.10 Limitation of Liability

12.10.1 Service Provider shall not be liable to the CLIENT for any indirect, special, consequential, exemplary and/or incidental damages arising from the use of the Application.

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12.10.2 Furthermore, Service Provider shall not be liable for damages arising from the loss of business, the imposition of statutory penalties and the loss of business profits arising from the licensed access and use of the Application with hardware that is incapable of accessing the Application.

12.10.3 The CLIENT is solely responsible for the preparation, content, accuracy and review of all capturing and reports generated by the Application.

12.10.4 The Application does not provide any professional advice in the compilation of organisational information and Service Provider does not accept any liability for failure of the CLIENT to seek the appropriate professional advice in complying with the requirements of the Application.

12.10.5 The maximum liability of the SERVICE PROVIDER in respect of the afore stated claims shall be limited to the aggregate of fees that have accrued to the SERVICE PROVIDER for the obligations that form the subject of the breach of contract as at the time that the cause of action arose.

12.10.6 Nothing in this Agreement shall exclude or limit Service Provider's liability in respect of dishonesty, fraud or wilful neglect by Service Provider, fraudulent misrepresentation and liability which may not otherwise be limited or excluded under applicable law.

12.11

Ownership of Documents and Copyright

12.11.1 Copyright of all documents prepared by the Service Provider in accordance with the relevant provisions of the Copyright Act (Act 98 of 1978) relating to the Service undertaken under this agreement, shall be vested in the Client. Where copyright is vested in the Service Provider, the Client shall be entitled to use the documents or copy them only for the purposes for which they are intended in regard to the Project and need not obtain the Service Provider's permission to copy for such use. Where Copyright is vested in the Client, the Service Provider shall not be liable in any way for the use of any of the information other than as originally intended for the Service and the Client hereby indemnifies the Service Provider against any claim which may be made against him by any party arising from the use of such documentation for other purposes.

12.11.2 The ownership of data and factual information collected by the Service Provider and paid for by the Client shall, after payment by the Client, lay with the Client.

12.11.3 The client shall have no right to use any documents prepared by the Service Provider whilst the payment of any fees and expenses due to the Service Provider in terms of the Contract is overdue.

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12.12 Breach and Termination

12.12.1 In the event that either party breached any provision of this agreement, and;
12.12.2 The breaching party is the CLIENT, then in such event SERVICE PROVIDER shall give CLIENT thirty (30) days written notice to rectify such breach failing which SERVICE PROVIDER shall be entitled to cancel the agreement or claim specific performance and damages save where specifically prohibited herein.

12.12.3 The breaching party is the SERVICE PROVIDER, then in such event CLIENT shall give SERVICE PROVIDER, thirty (30) days written notice to rectify such breach failing which CLIENT shall be entitled, shall be entitled to cancel the agreement or claim specific performance and damages save where specifically prohibited herein.

12.12.4 The CLIENT may terminate this Agreement on 10 days written notice to Service Provider if Service Provider commits a material breach of this Agreement and fails to remedy the breach within 30 days of written notice to do so, or such shorter period as may be reasonable in the circumstances.
12.11.4 The provisions regarding the ownership of intellectual property and confidentiality shall survive any form of termination of this Agreement.

12.13 Indemnity

12.13.1 Subject to clause 12.10 (Limitation of Liability), both Parties irrevocably indemnify and hold each other harmless against all actual and contingent claims, liability, damages, losses and/or expenses (including, without limitation, legal costs on the scale as between attorney and own CLIENT and any additional legal costs) and costs of any nature whatsoever and howsoever arising, suffered, incurred and/or paid by the indemnified Party arising out of or pursuant to:

- 12.12.1.1 software virus infections and consequential results;
- 12.12.1.2 computer system crashes; and/or
- 12.12.1.3 loss of data, arising from the use of the Application.

12.13.2 The CLIENT irrevocably indemnifies and holds Service Provider harmless against all actual and contingent claims, liability, damages, losses and/or expenses (including, without limitation, legal costs on the scale as between attorney and own CLIENT and any additional legal costs) and costs of any nature whatsoever and howsoever arising, suffered, incurred and/or paid by the Service Provider arising out of or pursuant to:

- 12.12.2.1 the use of the Application; and
- 12.12.2.2 any suits, claims, demands or actions of whatever nature made or instituted by the CLIENT's employees or a third party with regard to any action taken in terms of the Application or any

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act or omission by Service Provider, save as otherwise provided for in this Agreement.

12.14 CLIENTs Use of System

12.14.1 The CLIENT has access to the system via a hosted service provided by the Service Provider.

12.14.2 The Service Provider shall provide the Client with details of the hosted service via a URL Link.

12.15 Amendments to Scope

Any change to the scope of work as outlined in clause 10 must be duly authorized by both Parties.

12.16 Confidentiality

12.16.1 Without the prior written consent of the other Party, each Party will keep confidential and will not disclose to any person:

12.16.1.1 The details of this Agreement, the details of the negotiations leading to this Agreement, and the information handed over to such Party during the course of negotiations, as well as the details of all the transactions or agreements contemplated in this Agreement; and

12.16.1.2 all information relating to the business or the operations and affairs of each of the Parties, (together "Confidential Information").

12.16.2 Subject to the further provisions of this clause, the Parties agree to keep all Confidential Information confidential and to disclose it only to their respective employees and personnel who:

12.16.2.1 have a need to know (and then only to the extent that each such person has a need to know);

12.16.2.2 are aware that the Confidential Information should be kept confidential;

12.16.2.3 are aware of the disclosing Party's undertaking in relation to the Confidential Information in terms of this Agreement; and

12.16.2.4 have been directed by the disclosing Party to keep the Confidential Information confidential and have undertaken to keep the Confidential Information confidential.

12.16.3 The obligations of the Parties in relation to the maintenance and non-disclosure of Confidential Information in terms of this Agreement do not extend to Confidential Information that:

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12.16.3.1 is disclosed to the receiving Party in terms of this Agreement but at the time of such disclosure such Confidential Information is known to be in the lawful possession or control of that Party and not subject to an obligation of confidentiality;

12.16.3.2 is or becomes public knowledge, otherwise than pursuant to a breach of this Agreement by the Party who disclosed such Confidential Information;

12.16.3.3 is required by the provisions of any law, statute or regulation, or during any court proceedings, or by the rules or regulations of any recognised stock exchange to be disclosed and the Party required to make the disclosure has taken all reasonable steps to oppose or prevent the disclosure of and to limit, as far as reasonably possible, the extent of such disclosure and has consulted with the other Party prior to making such disclosure.

12.16.4 The confidentiality obligations set forth in this clause shall survive the termination, invalidity or expiration of this Agreement.

12.17 Intellectual Property Rights

12.17.1 Each of the Parties undertakes to ensure that any intellectual property right of either Party that requires special protection from third parties will be protected through a separate non-disclosure agreement.

12.17.2 The Parties acknowledge that the Applications are protected, or are in the process of being protected, by copyright, trade secret and other intellectual property laws which are capable of being protected as at the signature date of this Agreement or in the future anywhere in the world.

12.17.3 Service Provider is the exclusive and beneficial owner of all right, title and interest in and to the Application and hereby warrants that no other person owns the title, copyright or any other intellectual property rights in the Application. Nothing contained in this Agreement shall give the CLIENT any right, title or interest in and to the Application other than as expressly provided for in this Agreement.

12.17.4 The CLIENT shall at all times respect any and all of the copyrights, trademarks and any other intellectual property rights used or embodied in or in connection with any of the Service Provider applications, products and services and the products and/or the delivery thereof, including all documentation and manuals relating thereto, as the property of Service Provider.

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- 12.17.5 Except where expressly provided otherwise in this Agreement, nothing in this Agreement shall operate to transfer from Service Provider to the CLIENT any right, title or interest, including any intellectual property rights, in the Application or any other intellectual property which is owned by Service Provider or belonging to a third party. No licenses will be deemed to have been granted by the Service Provider to the CLIENT to any of its intellectual property rights, except as otherwise expressly provided in this Agreement.
- 12.17.6 The provisions of this clause 12.6 shall survive the termination or expiry of this Agreement for any reason.
- 12.18 Payments**
- 12.18.1 In consideration for the performance of its obligations in terms of this Agreement, the CLIENT shall pay Service Provider the amounts detailed and in accordance with the Payment Schedule as outlined in Section 6 of this Agreement.
- 12.18.2 All invoices must be paid by the CLIENT within Thirty days of receipt of a valid invoice from Service Provider in South African Rand currency by direct deposit into Service Provider's South African banking account, the details of which will appear on the respective invoice.
- 12.18.3 The CLIENT undertakes to pay a payment penalty which is the interest on any overdue amounts at the rate of interest (nominal annual compounded monthly in arrears) from time to time published by the First National Bank as its prime overdraft lending rate calculated from the date the payment is due until the date the payment is paid, unless:
- 12.18.3.1 the CLIENT advises Service Provider of any anticipated delay in payment according to the payment schedule in advance at least 10 business days prior to the due date of the payment;
- and/or
- 12.18.3.2 the delayed payment has not been necessitated by any failure of Service Provider to comply with delivery of its scope of work.
- 12.18.4 The CLIENT shall not be absolved from making the payments on the stipulated date as a consequence of its failure to comply with its requirements in terms of this Agreement.
- 12.18.5 Service Provider's failure to comply with its obligations in terms of this Agreement for a consistent period of 10 days, whether with regard to the

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scope of work or otherwise, shall entitle the CLIENT to withhold payment until such work has been completed.

12.18.6 Either Party shall specify the nature of any obligation which the other Party has failed to perform in terms of this Agreement and request such Party to remedy such failure, within a period not exceeding 15 (fifteen) working days after receipt of such notice, prior to imposing any payment penalty, cancellation of the Agreement, or the initiation of a claim for damages.

12.18.7 Either Party shall specify the nature of any obligation which the other Party has failed to perform in terms of this Agreement and request such Party to remedy such failure, within a period not exceeding 15 (fifteen) working days after receipt of such notice, prior to imposing any payment penalty, cancellation of the Agreement, or the initiation of a claim for damages.

12.19 **Arbitration**

12.19.1 Should any dispute arise from any matters relating to this Agreement or the validity or meaning or execution thereof, the Parties shall, in good faith, seek an amicable resolution to such dispute by referring such dispute to the [relevant supervisors] of the Parties concerned, for their negotiation and settlement.

12.19.2 To the extent that no settlement is reached in terms of clause 1 within 14 (Fourteen) days of referral, the dispute shall be referred to the Chief Executive Officers of the Parties concerned for their negotiation and settlement. To the extent that no settlement is reached in terms of this clause within 30 (Thirty) days of referral, the dispute shall be dealt with in accordance with the arbitration procedures set out in this clause 12.19.

12.19.3 Arbitration must be requested in writing to the other Party within 10 (ten) business days of a failed dispute resolution meeting.

12.19.4 The arbitration shall be governed by the Arbitration Act, 1965, or any replacement Act and shall take place in accordance with the Commercial Arbitration Rules of the Arbitration Foundation of South Africa ("AFSA").

12.19.5 The Parties shall agree on the arbitrator and failing agreement within 7 days after the arbitration has been demanded, the arbitrator shall:

12.19.5.1 if the matter is primarily of an accounting nature, be a practicing accountant of not less than 10 years standing, appointed by the Registrar of AFSA for the time being; and

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- 12.19.5.2 if the matter is primarily of a legal nature or any matter which is neither primarily of an accounting nature or a legal nature, be a practicing attorney of not less than 10 years standing or a practicing senior advocate of not less than 15 years standing, appointed by the Registrar of AFSA for the time being.
- 12.19.6 The minutes of the failed dispute resolution must be submitted to the arbitrator.
- 12.19.7 Each Party shall submit a comprehensive written statement to the arbitrator containing all evidence, sworn statements, facts, submissions of expert witnesses etc. on which their case is based. A copy is to be served to the other Party. Each Party has a right to respond in writing to the other's submissions. Any interested person may provide oral or written evidence at the arbitration at the request of either Party.
- 12.19.8 The arbitration shall take place in English and be held in Johannesburg. The Parties shall endeavour to ensure that it is completed within 90 days after notice requiring the claim to be referred to arbitration is given.
- 12.19.9 The arbitrator shall announce his decision which according to his discretion is legally valid, fair and appropriate.
- 12.19.10 The costs of the arbitration shall be borne by the unsuccessful party.
- 12.19.11 This clause shall be severable and shall remain valid after the termination of this Agreement for any reason whatsoever.

12.20 Force Majeur

- 12.20.1 Neither Party shall have any liability or be deemed to be in breach of this Agreement for any delays or failures in the performance of this Agreement which result from circumstances beyond the reasonable control of that Party. Circumstances beyond the control of a Party will include any inescapable events which will hinder the Parties from fulfilling the Agreement correctly including but not necessarily limited to the following matters:
- 12.20.1.1 war, invasion, act of foreign enemy, hostilities or warlike operations (whether that be declared or not), civil war, mutiny, rebellion, revolution, insurrection, military or usurped power, confiscation or destruction or requisition by order of any government or any public authority, or any other Act of state, including prevention or denial of trade, sanctions or closure of borders;
- 12.20.1.2 earthquake, flood, fire, drought or other physical disaster;

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12.20.1.3 strike or lockout or other industrial action by employees;

12.20.1.4 any other circumstances beyond the reasonable control and not within the reasonable expectation of either Party.

12.20.22 If either Party to this Agreement is prevented from or delayed in performing any of its obligations under this Agreement by circumstances beyond the control of such Party as set out in this clause, then it will notify the other Party in writing of the nature and expected duration of such circumstances and of the obligation, performance of which is delayed or prevented and both Parties will thereupon be excused from the performance or punctual performance, as the case may be, of their respective obligations from the date of such notification, for so long as the circumstances or prevention or delay may continue.

[Drafting Note: to be discussed whether any party should be given the right to terminate this Agreement in the event of a continuous state of force majeure.]

12.21 Domicilia and Notices

12.21.1 Service Provider chooses as its domicilia citandi et executandi the following address:

Physical Address: 22 Hornbill Road
Meadowhurst
Randburg
2194
Tel Number: 011 318 0286

Marked for the attention of: Mmathapelo Bridgette Mabula

12.21.2 The CLIENT chooses as its domicilia citandi et executandi the following address:

Physical Address: 64 Springbok Street
Hoedspruit
1380

Tel Number: 015 793 2409

Marked for the attention of: Municipal Manager

12.21.3 The domicile of each Party may be changed by written notice to the other Party and will be effective from the date of receipt by the latter of such notice.

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12.21.4 Any notice, instruction or request required or permitted to be given or made under or in connection with this Agreement shall be in writing.

12.21.5 A notice given as set out above which:

12.21.5.1 is delivered by hand during the normal business hours of the addressee at the addressee's domicile for the time being shall be presumed, unless the contrary is proved by the addressee, to have been received by the addressee at the time of delivery;

12.21.5.2 is transmitted during normal business hours by fax to the fax number or e-mail to the e-mail address in terms of clause 12.21.1 and clause 12.21.2 shall, unless the contrary is proved by the addressee, be deemed to have been received by the addressee on the date of transmission, and if transmission after normal business hours shall be deemed to have been received by the addressee on the first business day succeeding the date of transmission; and

12.21.6 is sent by prepaid registered post shall be deemed to be received by the receiving Party on the 7th (seventh) business day following the date of posting thereof.

12.22 Assignment

A Party may not cede any or all of that Party's rights or delegate any or all of that Party's obligations under this Agreement without the prior written consent of the other Party.

12.23 Solicitation of Employees

12.23.1 It is agreed that neither Party shall, for the duration of this Agreement or any agreements contemplated for a period of 12 (twelve) months from the date of termination of this Agreement, employ and/or solicit to employ, induce or procure any employee, contractor, subcontractor or consultant of the other Party to terminate its employment or Agreement with the other Party, and/or to become employed or associated with the other Party or any concern in which the other Party has an involvement, regardless of the nature of such involvement, whether directly or indirectly through any third party.

12.23.2 The Parties agree that bona fide gifts of acknowledgement are often misinterpreted. For this reason it is agreed that neither Party shall under any circumstances offer, promise or make any gift, payment, loan, reward, benefit

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or other advantage of any nature whatsoever to any of the other Party's employees.

12.24 Corrupt Acts

12.24.1 SERVICE PROVIDER acknowledges that the Client has a "zero tolerance" of corrupt acts of the giving, receiving, soliciting or offering or gratification.

12.24.2 SERVICE PROVIDER warrants that in entering into this agreement it has not committed any corrupt act.

12.24.3 IF SERVICE PROVIDER, any shareholder, any subcontractor or any affiliate or any of them (or anymore employed by acting on behalf of any of them) commits by MARULENG of having committed any corrupt act during the term of this agreement, then MARULENG shall be entitled to terminate this agreement with immediate effect by giving written notice to SERVICE PROVIDER;

12.24.4 Any notice of termination under this clause shall specify:

12.24.4.1 The nature of the corrupt act;

12.24.4.2 The identity of party or parties who MARULENG believes has committed the corrupt act; and

12.24.4.3 The date on which this agreement will terminate in accordance with the applicable provisions of this clause.

12.24.5 Without prejudice to its other rights or remedies in terms of this agreement or otherwise available in law, should MARULENG terminate this agreement because of a corrupt act, MARULENG shall be entitled to recover from SERVICE PROVIDER the great of:

12.24.5.1 The amount of value of the gift in consideration or commission which is the subject of the corrupt act; and

12.24.5.2 Any direct losses sustained by MARULENG in consequence of any breach of this clause by SERVICE PROVIDER.

12.24.5.3 SERVICE PROVIDER shall notify MARULENG immediately if any director or manager or person in a position of authority, becomes aware at any time of any corrupt act in the award of this contract or during the term of this contract or becomes aware that any official of MARULENG is seeking or has sought to solicit any improper inducement or gratification from SERVICE PROVIDER or from any of its shareholders or any subcontractor or any affiliate of any of them (or anyone employed by or acting in behalf of any of them)

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12.25 Miscellaneous

- 12.25.1 This Agreement contains all the express provisions agreed to between the Parties with regard to the subject matter of the Agreement, and supersedes and novates in its entirety any previous understandings or agreements between the Parties in respect thereof.
- 12.25.2 Save as is expressly provided for in this Agreement, no provision of this Agreement constitutes a stipulation for the benefit of a third person (i.e. a stipulatio alteri) which, if accepted by the person, would bind any Party in favor of that person.
- 12.25.3 A Party may not rely on any representation (whether or not made innocently, negligently or deliberately) which allegedly induced that Party to enter into this Agreement, unless the representation is recorded in this Agreement.
- 12.25.4 No contract varying, adding to, deleting from or cancelling this Agreement, and no waiver of any right under this Agreement, shall be effective unless reduced to writing and signed by or on behalf of the Parties.
- 12.25.5 The grant of any indulgence, extension of any time or relaxation of any provision by a Party under this Agreement (or under any other agreement or document issued or executed pursuant to this Agreement) shall not constitute a waiver of any right by the grantor or prevent or adversely affect the exercise by the grantor of any existing or future right of the grantor.
- 12.25.6 This Agreement is to be governed, interpreted and implemented in accordance with the laws of South Africa.
- 12.25.7 Subject to clause 12.18, the Parties consent to the non-exclusive jurisdiction of the South Gauteng High Court, Johannesburg (or its successor) for any proceedings arising out of or in connection with this Agreement.
- 12.25.8 Each Party shall bear that Party's own legal costs and disbursements of and incidental to the negotiation, preparation, settling, signing and implementation of this Agreement.
- 12.25.9 Any costs, including all legal costs on an attorney and own CLIENT basis and any VAT, incurred by a Party arising out of or in connection with a breach by the other Party shall be borne by the Party in breach.

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12.25.10 This Agreement may be executed in counterparts, each of which shall be deemed to be an original and which together shall constitute one and the same Agreement.

12.25.11 Each of the Parties hereby respectively agrees and acknowledges that each provision of this Agreement (and each provision of the annexes hereto) is fair and reasonable in all the circumstances and is part of the overall intention of the Parties in connection with this Agreement.

12.25.12 Each of the Parties shall at all times act in good faith towards each other and shall not bring the other Party into disrepute.

12.25.13 Each of the Parties undertakes at all times to do all such things, perform all such acts and take all such steps, and to procure the doing of all such things, within its power and control, as may be open to it and necessary for and incidental to the putting into effect or maintenance of the terms and conditions of this Agreement.

12.26 Whole Agreement

This agreement constitutes the whole agreement between the parties as to the subject matter hereof and no agreement, representation or warranty between the Parties other than set out herein shall be binding on the Parties.

12.27 Relaxation

No latitude, extension of time or other indulgence which may be given or allowed by one Party to the other Party in respect of the performance of any obligation hereunder or the enforcement of any right arising here from and no single or partial exercise of any right by such former Party shall under any circumstance be construed to be an implied consent by such Party or operate as a waiver of, a novation of, or otherwise affect any of that Party's rights in terms of or arising from this agreement or stop such Party from enforcing, at any time and without notice, strict and punctual compliance with each and every provision thereof.

12.28 Independent Parties

Nothing in this agreement shall constitute a partnership, joint venture, agency or employment agreement between the parties hereto and neither party shall have the authority or power to bind or contract in the name of or to create a liability against other in any way for any purpose.

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Section 13: Signatories to Agreement

13.1 Service Provider Signatories

THUS DONE AND SIGNED AT Randburg on the day of 01 December 2021
in the presence of the undersigned witnesses.



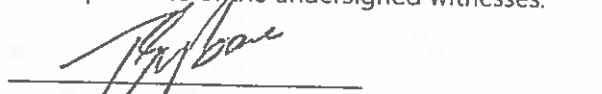
ON BEHALF OF SERVICE PROVIDER
(Duly authorised and warranting such authority)

AS WITNESSES:

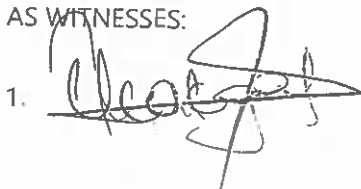
1. 

13.2 CLIENT Signatories

THUS DONE AND SIGNED AT Roosburg on the 01 day of December 2021
in the presence of the undersigned witnesses.


ON BEHALF OF MARULENG LOCAL MUNICIPALITY
(Duly authorised and warranting such authority)

AS WITNESSES:

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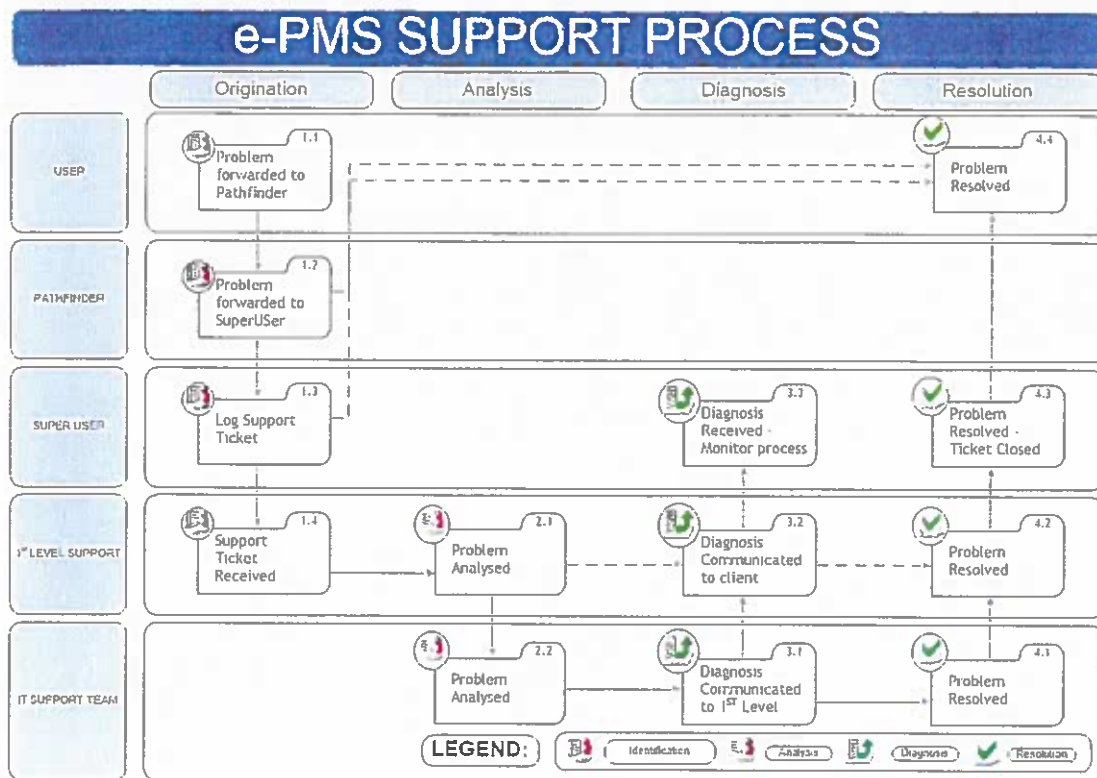
Annexure A: Sample Service Provider License Certificate

ANNUAL LICENSE CERTIFICATE									
Name of CLIENT						Ref Number			
Name of System									
Period of License	From					To			
CLIENT System Custodian	Name								
	Designation								
	email								
	Tel Number	Office				Mobile			
System Hosting Details									
Free Support Hours									
Number of Licenses	Users					SuperUser			
Name of SuperUser 1	Name								
	Designation								
	email								
	Tel Number	Office				Mobile			
Name of SuperUser 2	Name								
	Designation								
	email								
	Tel Number	Office				Mobile			
Name of SuperUser 3	Name								
	Designation								
	email								
	Tel Number	Office				Mobile			
Name of SuperUser 4	Name								
	Designation								
	email								
	Tel Number	Office				Mobile			
Service Provider Support Desk Details	Name								
	Designation								
	email								
	Tel Number	Office				Mobile			
Service Provider Support Desk Details	Name								
	Designation								
	email								
	Tel Number	Office				Mobile			
Approved by	Name				Designation			Date	

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Annexure B: Service Provider Support Process



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Annexure C: Fee Structure (As per Proposal Submitted)

Section A : ePMS System Costs

	USER THRESHOLDS				
	0 - 50	51-100	101-200	201-500	ABOVE 500 & UNCAPPED
Single Municipal Application System (Mampudi Holdings)					
Monthly Costs	75 000	105 000	135 000	150 000	180 000
Annual Costs	900 000	1 260 000	1 620 000	1 800 000	2 160 000
Monthly User	1 500	1 050	675	300	180
Regional DDM Application Municipal Application System (Mampudi Holdings)					
Single Municipal Application System					
Monthly Costs	82 500	115 500	148 500	165 000	198 000
Annual Costs	990 000	1 386 000	1 782 000	110 000	2 376 000
Monthly User	1 650	1 155	743	330	198
The Monthly Fees are inclusive of:					
1. Monthly Rental					
2. License Fees					
3. Hosting					
4. Monthly Maintenance					
5. Functional Efficiency Upgrades					
6. Superuser Licenses					
Add Annual Escalation					
6%					

Section B – Professional Fees (Business Consulting)

Role	Salary Band	Hourly Rate
Project Leader/Engagement Partner	15/16	R2 509
Senior Manager	14/15	R1 985
Project Manager	14	R1 850
Senior Specialist – ePMS	14	R1 850
Specialist ePMS / Senior Consultant	13/14	R1 760
Consultant (Post Articles)	11/12	R1 051
Consultant (3 rd Year)	10/11	R 899
Trainee Accountant (1 st & 2 nd Year)	-	R 475

These rates are in accordance with the proposal submitted and accepted by the municipality. Travel shall be reimbursed by the municipality in line with AA rates, Accommodation shall be charged for at cost in line with National Treasury Guidelines and Subsistence shall also be in line with National Treasury Guidelines and/or cost containment regulations.

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